

HOUSE AMENDMENT NO. _____
TO
HOUSE AMENDMENT NO. _____

Offered By

AMEND House Amendment No. _____ to House Committee Substitute for Senate Bill No. 24, Page 5, Line 19, by inserting after all of said line the following:

"Further amend said bill, Page 37, Section 143.790, Line 255, by inserting after all of said section and line the following:

"144.010. 1. The following words, terms, and phrases when used in sections 144.010 to 144.525 have the meanings ascribed to them in this section, except when the context indicates a different meaning:

(1) "Admission" includes seats and tables, reserved or otherwise, and other similar accommodations and charges made therefor and amount paid for admission, exclusive of any admission tax imposed by the federal government or by sections 144.010 to 144.525;

(2) "Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect, and the classification of which business is of such character as to be subject to the terms of sections 144.010 to 144.525. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business, does not constitute engaging in business within the meaning of sections 144.010 to 144.525 unless the total amount of the gross receipts from such sales, exclusive of receipts from the sale of tangible personal property by persons which property is sold in the course of the partial or complete liquidation of a household, farm or nonbusiness enterprise, exceeds three thousand dollars in any calendar year. The provisions of this subdivision shall not be construed to make any sale of property which is exempt from sales tax or use tax on June 1, 1977, subject to that tax thereafter;

(3) "Captive wildlife", includes but is not limited to exotic partridges, gray partridge, northern bobwhite quail, ring-necked pheasant, captive waterfowl, captive white-tailed deer, captive elk, and captive furbearers held under permit issued by the Missouri department of conservation for hunting purposes. The provisions of this subdivision shall not apply to sales tax on a harvested animal;

(4) "Gross receipts", except as provided in section 144.012, means the total amount of the sale price of the sales at retail including any services other than charges incident to the extension of credit that are a part of such sales made by the businesses herein referred to, capable of being valued in money, whether received in money or otherwise; except that, the term "gross receipts" shall not include the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. In determining any tax due under sections 144.010 to 144.525 on the gross receipts, charges incident to the extension of credit shall be specifically exempted. For the purposes of sections 144.010 to 144.525 the total amount of the sale price above mentioned shall be

Action Taken _____ Date _____

1 deemed to be the amount received. It shall also include the lease or rental consideration where the
 2 right to continuous possession or use of any article of tangible personal property is granted under a
 3 lease or contract and such transfer of possession would be taxable if outright sale were made and, in
 4 such cases, the same shall be taxable as if outright sale were made and considered as a sale of such
 5 article, and the tax shall be computed and paid by the lessee upon the rentals paid;

6 (5) "Livestock", cattle, calves, sheep, swine, ratite birds, including but not limited to, ostrich
 7 and emu, aquatic products as defined in section 277.024, llamas, alpaca, buffalo, elk documented as
 8 obtained from a legal source and not from the wild, goats, horses, other equine, or rabbits raised in
 9 confinement for human consumption;

10 (6) "Motor vehicle leasing company" shall be a company obtaining a permit from the
 11 director of revenue to operate as a motor vehicle leasing company. Not all persons renting or leasing
 12 trailers or motor vehicles need to obtain such a permit; however, no person failing to obtain such a
 13 permit may avail itself of the optional tax provisions of subsection 5 of section 144.070, as
 14 hereinafter provided;

15 (7) "Person" includes any individual, firm, copartnership, joint adventure, association,
 16 corporation, municipal or private, and whether organized for profit or not, state, county, political
 17 subdivision, state department, commission, board, bureau or agency, except the state transportation
 18 department, estate, trust, business trust, receiver or trustee appointed by the state or federal court,
 19 syndicate, or any other group or combination acting as a unit, and the plural as well as the singular
 20 number;

21 (8) "Purchaser" means a person who purchases tangible personal property or to whom are
 22 rendered services, receipts from which are taxable under sections 144.010 to 144.525;

23 (9) "Research or experimentation activities" are the development of an experimental or pilot
 24 model, plant process, formula, invention or similar property, and the improvement of existing
 25 property of such type. Research or experimentation activities do not include activities such as
 26 ordinary testing or inspection of materials or products for quality control, efficiency surveys,
 27 advertising promotions or research in connection with literary, historical or similar projects;

28 (10) "Sale" or "sales" includes installment and credit sales, and the exchange of properties as
 29 well as the sale thereof for money, every closed transaction constituting a sale, and means any
 30 transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of
 31 tangible personal property for valuable consideration and the rendering, furnishing or selling for a
 32 valuable consideration any of the substances, things and services herein designated and defined as
 33 taxable under the terms of sections 144.010 to 144.525;

34 (11) "Sale at retail" means any transfer made by any person engaged in business as defined
 35 herein of the ownership of, or title to, tangible personal property to the purchaser, for use or
 36 consumption and not for resale in any form as tangible personal property, for a valuable
 37 consideration; except that, for the purposes of sections 144.010 to 144.525 and the tax imposed
 38 thereby: (i) purchases of tangible personal property made by duly licensed physicians, dentists,
 39 optometrists and veterinarians and used in the practice of their professions shall be deemed to be
 40 purchases for use or consumption and not for resale; and (ii) the selling of computer printouts,
 41 computer output or microfilm or microfiche and computer-assisted photo compositions to a
 42 purchaser to enable the purchaser to obtain for his or her own use the desired information contained
 43 in such computer printouts, computer output on microfilm or microfiche and computer-assisted
 44 photo compositions shall be considered as the sale of a service and not as the sale of tangible
 45 personal property. Where necessary to conform to the context of sections 144.010 to 144.525 and
 46 the tax imposed thereby, the term "sale at retail" shall be construed to embrace:

47 (a) Sales of admission tickets, cash admissions, charges and fees to or in places of
 48 amusement, entertainment and recreation, games and athletic events including dance, theater,

1 orchestra and other performing arts productions, commercial sports, spectator sports, gambling,
 2 racetracks, arcades, theme and amusement parks, water parks, circuses, carnivals, festivals, air
 3 shows, museums, marinas, motion picture theaters, and other commercial tourist attractions;

4 (b) Sales of electricity, electrical current, water and gas, natural or artificial, to domestic,
 5 commercial or industrial consumers;

6 (c) Sales of local and long distance telecommunications service to telecommunications
 7 subscribers and to others through equipment of telecommunications subscribers for the transmission
 8 of messages and conversations, and the sale, rental or leasing of all equipment or services pertaining
 9 or incidental thereto;

10 (d) Sales of service for transmission of messages by telegraph companies;

11 (e) Sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern,
 12 inn, restaurant, eating house, drugstore, dining car, tourist camp, tourist cabin, or other place in
 13 which rooms, meals or drinks are regularly served to the public;

14 (f) Sales of tickets by every person operating a railroad, sleeping car, dining car, express car,
 15 boat, airplane, and such buses and trucks as are licensed by the division of motor carrier and railroad
 16 safety of the department of economic development of Missouri, engaged in the transportation of
 17 persons for hire;

18 (12) "Seller" means a person selling or furnishing tangible personal property or rendering
 19 services, on the receipts from which a tax is imposed pursuant to section 144.020;

20 (13) The noun "tax" means either the tax payable by the purchaser of a commodity or service
 21 subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services
 22 during the period for which he or she is required to report his or her collections, as the context may
 23 require;

24 (14) "Telecommunications service", for the purpose of this chapter, the transmission of
 25 information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar means.
 26 As used in this definition, "information" means knowledge or intelligence represented by any form
 27 of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does
 28 not include the following if such services are separately stated on the customer's bill or on records of
 29 the seller maintained in the ordinary course of business:

30 (a) Access to the internet, access to interactive computer services or electronic publishing
 31 services, except the amount paid for the telecommunications service used to provide such access;

32 (b) Answering services and one-way paging services;

33 (c) Private mobile radio services which are not two-way commercial mobile radio services
 34 such as wireless telephone, personal communications services or enhanced specialized mobile radio
 35 services as defined pursuant to federal law; or

36 (d) Cable or satellite television or music services; and

37 (15) "Product which is intended to be sold ultimately for final use or consumption" means
 38 tangible personal property, or any service that is subject to state or local sales or use taxes, or any tax
 39 that is substantially equivalent thereto, in this state or any other state.

40 2. For purposes of the taxes imposed under sections 144.010 to 144.525, and any other
 41 provisions of law pertaining to sales or use taxes which incorporate the provisions of sections
 42 144.010 to 144.525 by reference, the term "manufactured homes" shall have the same meaning given
 43 it in section 700.010.

44 3. Sections 144.010 to 144.525 may be known and quoted as the "Sales Tax Law".

45 144.018. 1. Notwithstanding any other provision of law to the contrary, except as provided
 46 under subsection 2 or 3 of this section, when a purchase of tangible personal property or service
 47 subject to tax is made for the purpose of resale, such purchase shall be either exempt or excluded
 48 under this chapter if the subsequent sale is:

- (1) Subject to a tax in this or any other state;
- (2) For resale;
- (3) Excluded from tax under this chapter;
- (4) Subject to tax but exempt under this chapter; or
- (5) Exempt from the sales tax laws of another state, if the subsequent sale is in such other state.

The purchase of tangible personal property by a taxpayer shall not be deemed to be for resale if such property is used or consumed by the taxpayer in providing a service on which tax is not imposed by subsection 1 of section 144.020, except purchases made in fulfillment of any obligation under a defense contract with the United States government.

2. For purposes of subdivision (2) of subsection 1 of section 144.020, a place of amusement, entertainment or recreation, including games or athletic events, dance, theater, orchestra and other performing arts productions, commercial sports, spectator sports, gambling, racetracks, arcades, theme and amusement parks, water parks, circuses, carnivals, festivals, air shows, museums, marinas, motion picture theaters, and other commercial tourist attractions, shall remit tax on the amount paid for admissions or seating accommodations, or fees paid to, or in such place of amusement, entertainment or recreation. Any subsequent sale of such admissions or seating accommodations shall not be subject to tax if the initial sale was an arms length transaction for fair market value with an unaffiliated entity. If the sale of such admissions or seating accommodations is exempt or excluded from payment of sales and use taxes, the provisions of this subsection shall not require the place of amusement, entertainment, or recreation to remit tax on that sale.

3. For purposes of subdivision (6) of subsection 1 of section 144.020, a hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp, or other place in which rooms, meals, or drinks are regularly served to the public shall remit tax on the amount of sales or charges for all rooms, meals, and drinks furnished at such hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp, or other place in which rooms, meals, or drinks are regularly served to the public. Any subsequent sale of such rooms, meals, or drinks shall not be subject to tax if the initial sale was an arms length transaction for fair market value with an unaffiliated entity. If the sale of such rooms, meals, or drinks is exempt or excluded from payment of sales and use taxes, the provisions of this subsection shall not require the hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp, or other place in which rooms, meals, or drinks are regularly served to the public to remit tax on that sale.

4. The provisions of this section are intended to reject and abrogate earlier case law interpretations of the state's sales and use tax law with regard to sales for resale as extended in *Music City Centre Management, LLC v. Director of Revenue*, 295 S.W.3d 465, (Mo. 2009) and *ICC Management, Inc. v. Director of Revenue*, 290 S.W.3d 699, (Mo. 2009). The provisions of this section are intended to clarify the exemption or exclusion of purchases for resale from sales and use taxes as originally enacted in this chapter.

144.020. 1. A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:

(1) Upon every retail sale in this state of tangible personal property, including but not limited to motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats and outboard motors, a tax equivalent to four percent of the purchase price paid or charged, or in case such sale involves the exchange of property, a tax equivalent to four percent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, except as

1 otherwise provided in section 144.025;

2 (2) A tax equivalent to four percent of the amount paid for admission and seating
3 accommodations, or fees paid to, or in any place of amusement, entertainment or recreation, or
4 games and athletic events including dance, theater, orchestra and other performing arts productions,
5 commercial sports, spectator sports, gambling, racetracks, arcades, theme and amusement parks,
6 water parks, circuses, carnivals, festivals, air shows, museums, marinas, motion picture theaters,
7 and other commercial tourist attractions;

8 (3) A tax equivalent to four percent of the basic rate paid or charged on all sales of electricity
9 or electrical current, water and gas, natural or artificial, to domestic, commercial or industrial
10 consumers;

11 (4) A tax equivalent to four percent on the basic rate paid or charged on all sales of local and
12 long distance telecommunications service to telecommunications subscribers and to others through
13 equipment of telecommunications subscribers for the transmission of messages and conversations
14 and upon the sale, rental or leasing of all equipment or services pertaining or incidental thereto;
15 except that, the payment made by telecommunications subscribers or others, pursuant to section
16 144.060, and any amounts paid for access to the internet or interactive computer services shall not be
17 considered as amounts paid for telecommunications services;

18 (5) A tax equivalent to four percent of the basic rate paid or charged for all sales of services
19 for transmission of messages of telegraph companies;

20 (6) A tax equivalent to four percent on the amount of sales or charges for all rooms, meals
21 and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car,
22 tourist cabin, tourist camp or other place in which rooms, meals or drinks are regularly served to the
23 public;

24 (7) A tax equivalent to four percent of the amount paid or charged for intrastate tickets by
25 every person operating a railroad, sleeping car, dining car, express car, boat, airplane and such buses
26 and trucks as are licensed by the division of motor carrier and railroad safety of the department of
27 economic development of Missouri, engaged in the transportation of persons for hire;

28 (8) A tax equivalent to four percent of the amount paid or charged for rental or lease of
29 tangible personal property, provided that if the lessor or renter of any tangible personal property had
30 previously purchased the property under the conditions of "sale at retail" or leased or rented the
31 property and the tax was paid at the time of purchase, lease or rental, the lessor, sublessor, renter or
32 subrenter shall not apply or collect the tax on the subsequent lease, sublease, rental or subrental
33 receipts from that property. The purchase, rental or lease of motor vehicles, trailers, motorcycles,
34 mopeds, motortricycles, boats, and outboard motors shall be taxed and the tax paid as provided in
35 this section and section 144.070. In no event shall the rental or lease of boats and outboard motors
36 be considered a sale, charge, or fee to, for or in places of amusement, entertainment or recreation nor
37 shall any such rental or lease be subject to any tax imposed to, for, or in such places of amusement,
38 entertainment or recreation. Rental and leased boats or outboard motors shall be taxed under the
39 provisions of the sales tax laws as provided under such laws for motor vehicles and trailers. Tangible
40 personal property which is exempt from the sales or use tax under section 144.030 upon a sale
41 thereof is likewise exempt from the sales or use tax upon the lease or rental thereof.

1 2. All tickets sold which are sold under the provisions of sections 144.010 to 144.525 which
2 are subject to the sales tax shall have printed, stamped or otherwise endorsed thereon, the words
3 "This ticket is subject to a sales tax."."; and"; and
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5 Further amend said bill by amending the title, enacting clause, and intersectional references
6 accordingly.
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